

ESTTA Tracking number: **ESTTA397254**

Filing date: **03/09/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Facebook, Inc.
Granted to Date of previous extension	04/03/2011
Address	1601 South California Avenue Palo Alto, CA 94304 UNITED STATES
Attorney information	Jeffrey T. Norberg Cooley LLP 777 6th Street, NW Suite 1100 Washington, DC 20001 UNITED STATES jnorberg@cooley.com, trademarks@cooley.com, mweiand@cooley.com, krobison@cooley.com

Applicant Information

Application No	85026924	Publication date	10/05/2010
Opposition Filing Date	03/09/2011	Opposition Period Ends	04/03/2011
Applicant	Resorb Networks, Inc. 8 Heathcote Ave Edison, NJ 08817 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. First Use: 2010/01/10 First Use In Commerce: 2010/04/30

All goods and services in the class are opposed, namely: Computer services, namely, creating an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking featuring profile pictures of friends and video content


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	Failure to use, 15 U.S.C. 1051(a) and 1063.

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3734637	Application Date	05/24/2007
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Registration Date	01/05/2010	Foreign Priority Date	NONE
Word Mark	FACEBOOK		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 2006/08/00 First Use In Commerce: 2006/08/00 Software to enable uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network</p> <p>Class 038. First use: First Use: 2004/02/00 First Use In Commerce: 2004/02/00 Audio and video broadcasting services over the Internet or other communications network, namely, uploading, posting, showing, displaying, tagging and electronically transmitting information, audio, and video clips; providing on-line chat rooms, listservers, and on-line forums for transmission of messages among computer users concerning user-defined content; providing on-line chat rooms and electronic bulletin boards for transmission of messages among users in the field of general interest</p> <p>Class 041. First use: First Use: 2004/02/00 First Use In Commerce: 2004/02/00 On-line journals, namely, blogs featuring user-defined content</p> <p>Class 042. First use: First Use: 2004/02/00 First Use In Commerce: 2004/02/00 Application service provider (ASP) featuring software to enable uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network</p>		

U.S. Registration No.	3801147	Application Date	11/07/2006
Registration Date	06/08/2010	Foreign Priority Date	NONE
Word Mark	FACEBOOK		
Design Mark			


Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 2006/08/00 First Use In Commerce: 2006/08/00 Computer software development tools for social networking, building social networking applications and for allowing data retrieval, upload, access and management; application programming interface (API) for third-party software and online services for social networking, building social networking applications and for allowing data retrieval, upload, access and management</p> <p>Class 038. First use: First Use: 2004/02/00 First Use In Commerce: 2004/02/00 providing access to computer databases; electronic transmission of instant messages and data</p> <p>Class 041. First use: First Use: 2004/02/00 First Use In Commerce: 2004/02/00 Electronic publishing services, namely, publishing of online works of others featuring user-created text, audio, video, and graphics; providing on-line journals and web logs featuring user-created content</p> <p>Class 042. First use: First Use: 2004/02/00 First Use In Commerce: 2004/02/00 Providing temporary use of non-downloadable software applications for classifieds, virtual community, social networking, photo sharing, and transmission of photographic images</p>

U.S. Registration No.	3881770	Application Date	06/29/2006
Registration Date	11/23/2010	Foreign Priority Date	NONE
Word Mark	FACEBOOK		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2004/02/04 First Use In Commerce: 2004/04/00 Advertising and information distribution services, namely, providing classified advertising space via the global computer network; promoting the goods and services of others over the Internet; providing on-line computer databases and on-line searchable databases in the field of classifieds</p> <p>Class 038. First use: First Use: 2004/02/04 First Use In Commerce: 2004/02/04 Providing online chat rooms and electronic bulletin boards for registered users for transmission of messages concerning collegiate life, general interest, classifieds, virtual community, social networking, photo sharing, and transmission of photographic images; provision of on-line forums for the transmission of photographic images; provision of on-line forums for communications on topics of general interest</p> <p>Class 041. First use: First Use: 2004/02/04 First Use In Commerce: 2004/02/04 Providing on-line computer databases and on-line searchable databases in the field of collegiate life concerning college athletics, concerts, entertainment</p>		

	<p>events, art, performing arts, music, dance and academics; providing on-line computer databases and on-line searchable databases featuring collegiate student groups concerning subjects in the fields of academics and entertainment</p> <p>Class 042. First use: First Use: 2004/02/04 First Use In Commerce: 2004/02/04</p> <p>Computer services, namely, hosting online web facilities for others for organizing and conducting online meetings, gatherings, and interactive discussions; and computer services in the nature of customized web pages featuring user-defined information, personal profiles and information; computer services, namely, creating an on-line community for registered users to participate in discussion, get feedback from their peers, form virtual communities, and engage in social networking; peer-to-browser photo sharing services, namely, providing a website featuring technology enabling users to upload, view and download digital photos</p> <p>Class 045. First use: First Use: 2004/02/04 First Use In Commerce: 2004/02/04</p> <p>Internet based introduction and social networking services; providing on-line computer databases and on-line searchable databases in the field of social networking</p>
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U.S. Registration No.	3041791	Application Date	02/24/2005
Registration Date	01/10/2006	Foreign Priority Date	NONE
Word Mark	FACEBOOK		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2004/02/04 First Use In Commerce: 2004/02/04 providing an online directory information service featuring information regarding, and in the nature of, collegiate life, classifieds, virtual community and social networking</p> <p>Class 038. First use: First Use: 2004/02/04 First Use In Commerce: 2004/02/04 providing online chat rooms for registered users for transmission of messages concerning collegiate life, classifieds, virtual community and social networking</p>		

U.S. Registration No.	3122052	Application Date	02/24/2005
Registration Date	07/25/2006	Foreign Priority Date	NONE
Word Mark	FACEBOOK		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2004/11/16 First Use In Commerce: 2004/11/16 [providing an online directory information service featuring information regarding, and in the nature of, collegiate life, classifieds, virtual community and social networking] Class 038. First use: First Use: 2004/11/16 First Use In Commerce: 2004/11/16 providing online chat rooms for registered users for transmission of messages concerning collegiate life, classifieds, virtual community and social networking


U.S. Registration No.	3659516	Application Date	08/29/2006
Registration Date	07/21/2009	Foreign Priority Date	NONE
Word Mark	FACEBOOK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2006/02/00 First Use In Commerce: 2006/02/00 Clothing for men women, and children, namely, shirts, t-shirts, jackets, tops, sweat shirts, headwear, hats, caps		

U.S. Registration No.	3716926	Application Date	03/07/2007
Registration Date	11/24/2009	Foreign Priority Date	NONE
Word Mark	FACEBOOK		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 018. First use: First Use: 2005/09/00 First Use In Commerce: 2005/09/00 Bags, namely, all purpose sports bags, all purpose carrying bags, bags and hold-alls for sports clothing, tote bags, book bags, carry-all bags, traveling bags; umbrellas; briefcase-type portfolios</p> <p>Class 020. First use: First Use: 2005/09/00 First Use In Commerce: 2005/09/00 Picture frames</p> <p>Class 021. First use: First Use: 2009/05/00 First Use In Commerce: 2009/05/00 Insulating sleeves for beverage cans; insulating sleeves for beverage bottles; portable can coolers; portable bottle coolers; thermally insulated containers for beverages</p>


U.S. Registration No.	3826546	Application Date	08/29/2006
Registration Date	07/27/2010	Foreign Priority Date	NONE
Word Mark	FACEBOOK		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 025. First use: First Use: 2010/05/06 First Use In Commerce: 2010/05/06 Clothing for men, women and children, namely, bottoms, pants, loungewear, sweat pants</p>		

U.S. Registration No.	3814888	Application Date	11/07/2006
Registration Date	07/06/2010	Foreign Priority Date	NONE
Word Mark	FACEBOOK		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 2007/06/00 First Use In Commerce: 2007/06/00 Providing temporary use of non-downloadable software applications for video sharing


U.S. Registration No.	3917332	Application Date	03/07/2007
Registration Date	02/08/2011	Foreign Priority Date	NONE
Word Mark	FACEBOOK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 2010/05/00 First Use In Commerce: 2010/05/00 Bags, namely, backpacks, beach bags, gym bags; drawstring pouches Class 021. First use: First Use: 2009/09/11 First Use In Commerce: 2009/09/11 Bottle openers; plastic cups; mugs; cups; foam drink holders; glass and porcelain giftware, namely, cups; beverage glassware		


U.S. Application No.	77896312	Application Date	12/17/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FACEBOOK		

Design Mark	
Description of Mark	The mark consists of the word "FACEBOOK" in white letters with a blue background.
Goods/Services	Class 009. First use: First Use: 2006/08/00 First Use In Commerce: 2006/08/00 Computer software development tools; Computer software for use as an application programming interface (API); Application programming interface (API) for computer software which facilitates online services for social networking, building social networking applications and for allowing data retrieval, upload, download, access and management; Computer software to enable uploading, downloading, accessing, posting, displaying, tagging, blogging, streaming, linking, sharing or otherwise providing electronic media or information via computer and communication networks


U.S. Application No.	77896315	Application Date	12/17/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FACEBOOK		
Design Mark			
Description of Mark	The mark consists of the word "FACEBOOK" in white letters with a blue background.		
Goods/Services	<p>Class 035. First use: Marketing, advertising and promotion services; market research and information services; advertising services, namely, promoting the goods and services of others via computer and communication networks; operating on-line marketplaces for sellers of goods and/or services; online retail store services featuring digital media, namely, pre-recorded digital sound, video and data recordings featuring music, text, video, games, comedy, drama, action, adventure or animation; charitable services, namely, promoting public awareness about charitable, philanthropic, volunteer, public and community service and humanitarian activities</p> <p>Class 038. First use: Delivery of digital music by electronic transmission</p> <p>Class 041. First use: Contest and incentive award programs designed to recognize, reward and encourage individuals and groups which engage in self-improvement, self-fulfillment, charitable, philanthropic, volunteer, public and community service and</p>		

	humanitarian activities and sharing of creative work product		
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U.S. Application No.	77896317	Application Date	12/17/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FACEBOOK		
Design Mark			
Description of Mark	The mark consists of the word "FACEBOOK" in white letters with a blue background.		
Goods/Services	Class 036. First use: Financial transaction processing services, namely, clearing and reconciling financial transactions via computer and communication networks; Electronic processing and transmission of bill payment data for users of computer and communication networks; Electronic funds transfer services; Bill payment services; Financial exchange services, namely, providing a virtual currency for use by members of an online community via computer and communication networks		

U.S. Application No.	77896318	Application Date	12/17/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FACEBOOK		
Design Mark			
Description of Mark	The mark consists of the word "FACEBOOK" in white letters with a blue background.		
Goods/Services	Class 038. First use: Providing access to computer, electronic and online databases; telecommunications services, namely, electronic transmission of data, messages and information; providing online forums for communication on topics of general interest; providing online communications links which transfer web site users to other local and global web pages; providing access to web sites for others hosted on computer servers accessible via a global computer network; providing access to third party web sites by enabling users to log in through a universal username and password via a global computer network and other		


	<p>communication networks; providing online chat rooms and electronic bulletin boards for transmission of messages among users in the field of general interest; audio, text and video broadcasting services over the Internet or other communications networks featuring the uploaded, posted and tagged audio, text and video content of others; audio, text and video broadcasting services over the Internet or other communications networks, namely, electronically transmitting audio clips, text and video clips of others</p> <p>Class 045. First use:</p> <p>Identification verification services, namely, providing authentication of personal identification information</p>
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U.S. Application No.	77896322	Application Date	12/17/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FACEBOOK		
Design Mark			
Description of Mark	The mark consists of the word "FACEBOOK" in white letters with a blue background.		
Goods/Services	<p>Class 038. First use:</p> <p>Peer-to-peer photo sharing services, namely, electronic transmission of digital photo files among internet users</p> <p>Class 041. First use:</p> <p>Providing computer, electronic and online databases in the field of entertainment and in the fields of secondary, collegiate, social and community interest groups; on-line journals, namely, blogs in the fields of entertainment, education, social, political, cultural, economic, scientific and general interest; electronic publishing services, namely, publication of text and graphic works of others via computer and communications networks in the fields of entertainment, education, social, political, cultural, economic, scientific and general interest; publishing of electronic publications; entertainment services, namely, providing temporary use of interactive, multiplayer and single player games for games played via computer or communication networks; providing information about online computer games and video games via computer or communication networks; arranging and conducting competitions for video gamers and computer game players</p> <p>Class 042. First use:</p> <p>Peer-to-browser photo sharing services, namely, providing a website featuring technology enabling users to upload, view, and download digital photos; providing a web site featuring technology that enables users to upload and share video, photos, text, graphics and data; creating and maintaining blogs for others; providing a web hosting platform for use of non-downloadable software in connection with interactive, multiplayer and single player games for third parties</p>		

U.S. Application	77896323	Application Date	12/17/2009
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FACEBOOK		
Design Mark			
Description of Mark	The mark consists of the word "FACEBOOK" in white letters with a blue background.		
Goods/Services	<p>Class 035. First use: Compiling of information into computer databases</p> <p>Class 042. First use: Computer services, namely, creating on-line virtual communities for registered users to organize groups and events, participate in discussions, and engage in social, business and community networking; computer services, namely, hosting electronic facilities for others for organizing and conducting meetings, events and interactive discussions via communication networks; application service provider (ASP) services, namely, hosting computer software applications of others; application service provider (ASP) featuring software to enable or facilitate the uploading, downloading, streaming, posting, displaying, blogging, linking, sharing or otherwise providing electronic media or information over communication networks; providing an online network service that enables users to transfer personal identity data to and share personal identity data with and among multiple websites; providing a web site featuring technology that enables online users to create personal profiles featuring social networking information and to transfer and share such information among multiple websites; computer services, namely, creating indexes of information, sites and other resources available on computer networks; providing temporary use of non-downloadable software applications for social networking, creating a virtual community, and transmission of audio, video, photographic images, text, graphics and data; computer services in the nature of customized web pages featuring user-defined or specified information, personal profiles, audio, video, photographic images, text, graphics and data</p>		

U.S. Application No.	77896325	Application Date	12/17/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FACEBOOK		

Design Mark	
Description of Mark	The mark consists of the word "FACEBOOK" in white letters with a blue background.
Goods/Services	Class 038. First use: Providing access to computer databases in the fields of social networking, social introduction and dating Class 045. First use: Social introduction, networking and dating services; providing social services and information in the field of personal development, namely, self-improvement, self-fulfillment, charitable, philanthropic, volunteer, public and community services, and humanitarian activities

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	FACEPILE		
Goods/Services	Computer software and related internet and social networking services		

Attachments	77189479#TMSN.jpeg (1 page)(bytes) 77979375#TMSN.jpeg (1 page)(bytes) 78920322#TMSN.jpeg (1 page)(bytes) 78574726#TMSN.jpeg (1 page)(bytes) 78574730#TMSN.jpeg (1 page)(bytes) 78981126#TMSN.jpeg (1 page)(bytes) 77978174#TMSN.jpeg (1 page)(bytes) 78962629#TMSN.jpeg (1 page)(bytes) 77039123#TMSN.jpeg (1 page)(bytes) 77125103#TMSN.jpeg (1 page)(bytes) 77896312#TMSN.jpeg (1 page)(bytes) 77896315#TMSN.jpeg (1 page)(bytes) 77896317#TMSN.jpeg (1 page)(bytes) 77896318#TMSN.jpeg (1 page)(bytes) 77896322#TMSN.jpeg (1 page)(bytes) 77896323#TMSN.jpeg (1 page)(bytes) 77896325#TMSN.jpeg (1 page)(bytes) Facepiles Opposition.pdf (18 pages)(429041 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/ Jeffrey T. Norberg
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Name	Jeffrey T. Norberg
Date	03/09/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 85/026,924
For the Trademark FACEPILES
Published in the Official Gazette on October 5, 2010

FACEBOOK, INC.,)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
RESORB NETWORKS, INC.,)	
)	
Applicant.)	
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NOTICE OF OPPOSITION

Opposer Facebook, Inc. (“Facebook”), a Delaware corporation having its principal place of business at 1601 California Avenue, Palo Alto, California 94304, believes that it will be damaged by the issuance of a registration for the mark FACEPILES (the “FACEPILES Mark”), as applied for in Application Serial No. 85/026,924 filed on April 30, 2010 by Applicant Resorb Networks, Inc. (“Resorb”), a New York corporation located at 8 Heathcote Ave., Edison, New Jersey 08817.

As grounds for opposition, Facebook alleges that:

1. Facebook is the world’s leading provider of online social networking services. Indeed, Facebook’s website at <http://facebook.com> has been recognized as one of the most-trafficked websites of any kind in the world. The Facebook website allows computer users to find and communicate with existing friends, make new friends, organize groups and events and share their personal profiles, statuses, activities, photos, links and videos and to create online

communities of users with shared interests and connections. For all of the reasons further discussed herein, the FACEBOOK Marks, as defined below, are famous.

2. Facebook began offering its services in 2004. Since that time, Facebook has become one of the most widely recognized brands in the United States. As of early 2010, Facebook provided online networking services in over 70 languages to over 500 million active users worldwide, more than 250 million of whom typically logged on to the Facebook website on any given day.

3. Facebook provides tools for each of its users to create a personal web page (a “Profile”) on which the user can choose to display personal information such as education, professional background, and contact information. In addition, Facebook provides on each Profile a means through which users can communicate with each other, including via private electronic messages that are sent directly to users’ inboxes, as well as through online real-time chat. Facebook users are also able to send and receive items such as textual messages, links, photographs, or video via his or her own or another user’s Profile.

4. Facebook also provides a “Groups” feature, which allows users to selectively share information with a small group of friends, quickly post photos, chat with other members who are online, and keep in touch when they are not on Facebook through a group e-mail address.

5. Facebook additionally provides a “Pages” feature for organizations, businesses, celebrities, and bands to broadcast information in an official, public manner to people who choose to connect with them. Pages can be enhanced with applications that facilitate communications and engagement with existing audiences and capture new audiences.

6. Facebook also provides a “Places” feature, which enables users to identify their current location by “checking in” and connecting and sharing with others nearby. Users can take advantage of discounts, coupons, and other promotional offers by identifying their presence at retailers, eateries, entertainment venues, and other forums.

7. Facebook users are able to update their status and send items such as textual messages, links, photographs, or video from their mobile devices such as the Blackberry and iPhone smartphones, among others. The Facebook iPhone application is the most downloaded free iPhone application of all time. As of early 2011, there were more than 200 million active users accessing the Facebook service through their mobile devices.

8. Facebook also provides Facebook Platform, which allows Facebook to broaden its reach beyond the Facebook website. Facebook Platform enables third party websites to integrate aspects of the Facebook experience into their sites, and lets Facebook users interact and connect in other places across the web. In turn, these third party websites increase the visibility of Facebook and the FACEBOOK Marks. More than one million third party websites have integrated with Facebook Platform. As of April, 2010, two-thirds of comScore’s U.S. Top 100 websites and half of comScore’s Global Top 100 websites have integrated with Facebook. And, more than 150 million people engage with Facebook on external websites every month.

9. In addition, Facebook Platform allows for the creation of software programs such as tools and gadgets for personalizing and increasing the utility of user profiles, and interactive games. Facebook Platform provides developers of software for the mobile market the ability to integrate elements of the Facebook experience into their products. There are more than a million entrepreneurs and software developers worldwide who have created over 500,000 software programs (known as “applications”) for Facebook Platform.

10. On April 21, 2010, at the f8 Developers Conference in San Francisco, Facebook announced the release of a social plug-in under the name FACEPILE. FACEPILE is designed to further integrate Facebook users' experiences across the web. It shows the profile pictures of a user's friends who have already signed up on websites that have installed the FACEPILE plug-in. If a user signs into Facebook and visits an external site, he or she can see if anyone within his or her social network has signed up for the site or if his or her friends have commented on it. The FACEPILE plug-in was available on the Facebook website at least as of the same day, April 21, 2010, and received substantial coverage from the press and blogging community.

11. Nine days later, on April 30, 2010, Resorb filed Application Serial No. 85/026,924 for FACEPILES ("FACEPILES Application") on an in-use basis for "[c]omputer services, namely creating an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking featuring profile pictures of friends and video content" in Class 42. The FACEPILES Application claims a first use in commerce date of that same day, April 30, 2010, and a first use anywhere of January 10, 2010. That same day, Resorb registered the domain name www.facepiles.com.

FACEBOOK'S MARKS

12. Facebook is the owner of U.S. Trademark Registration 3,734,637 for the mark FACEBOOK, which was filed on May 24, 2007 and issued on January 5, 2010, for goods and services in Classes 9, 38, 41 and 42. The services covered by this registration include but are not limited to "[a]udio and video broadcasting services over the Internet or other communications network, namely, uploading, posting, showing, displaying, tagging and electronically transmitting information, audio, and video clips; providing on-line chat rooms, listservers, and

on-line forums for transmission of messages among computer users concerning user-defined content”; and “uploading, posting, showing, displaying, tagging and electronically transmitting information, audio, and video clips.”

13. Facebook is the owner of U.S. Trademark Registration 3,801,147 for the mark FACEBOOK, which was filed on November 7, 2006, and registered on June 8, 2010 for goods and services in Classes 9, 38, 41 and 42. The services covered by this registration include but are not limited to “[c]omputer software development tools for social networking”; and “[p]roviding temporary use of non-downloadable software applications for classifieds, virtual community, social networking, photo sharing, and transmission of photographic images.”

14. Facebook is the owner of U.S. Trademark Registration 3,881,770 for the mark FACEBOOK, which was filed on June 29, 2006 and registered on November 23, 2010, covering services in Classes 35, 38, 41, 42, and 45. The services covered by this registration include but are not limited to “computer services in the nature of customized web pages featuring user-defined information, personal profiles and information; computer services, namely, creating an on-line community for registered users to participate in discussion, get feedback from their peers, form virtual communities, and engage in social networking; peer-to-browser photo sharing services, namely, providing a website featuring technology enabling users to upload, view and download digital photos.”

15. Facebook is the owner of U.S. Trademark Registration 3,041,791 for the mark FACEBOOK, which was filed on February 24, 2005, and registered on January 10, 2006 for services in Classes 35 and 38.

16. Facebook is the owner of U.S. Trademark Registration 3,122,052 for the mark FACEBOOK, which was filed on February 24, 2005 and registered on July 25, 2006, covering services in Classes 35 and 38.

17. Facebook is the owner of U.S. Trademark Registration 3,659,516 for the mark FACEBOOK, which was filed on August 29, 2006 and registered on July 21, 2009, covering goods in Class 25.

18. Facebook is the owner of U.S. Trademark Registration 3,716,926 for the mark FACEBOOK, which was filed on March 7, 2007 and registered on November 24, 2009, covering goods in Classes 18, 20, and 21.

19. Facebook is the owner of U.S. Trademark Registration 3,826,546 for the mark FACEBOOK, which was filed on August 29, 2006 and registered on July 27, 2010, covering goods in Class 25.

20. Facebook is the owner of U.S. Trademark Registration 3,814,888 for the mark FACEBOOK, which was filed on November 7, 2006 and registered on July 6, 2010, covering goods in Class 42.

21. Facebook is the owner of U.S. Trademark Registration 3,917,332 for the mark FACEBOOK, which was filed on March 7, 2007 and registered on February 8, 2011, covering goods in Classes 18 and 21.

22. Facebook is also the owner of numerous pending U.S. applications to register marks consisting of or incorporating FACEBOOK or a variant thereof, including applications for the FACEBOOK logo (Serial Nos. 77/896,312, 77/896,315, 77/896,317, 77/896,318, 77/896,322, 77/896,323, 77/896,325), filed on December 17, 2009 in Classes 9, 35, 36, 38, 41, 42, and 45.

23. In addition, Facebook owns common law rights in the FACEBOOK mark, which has been continuously, prominently, and conspicuously in use on its website and other materials in interstate commerce in the United States since at least as early as February 2004. All of Facebook's marks that consist of or incorporate the term FACEBOOK or a variant thereof will hereafter be referred to as the "FACEBOOK Marks."

24. The FACEBOOK Marks are inherently distinctive.

25. Facebook has been the subject of thousands of unsolicited stories in television, radio, and print media, highlighting Facebook's innovative and successful efforts in online networking and communities. A fictional retelling of Facebook's founding was also depicted in the Academy Award winning film "The Social Network," which has grossed hundreds of millions at the box office since its release in 2010. Facebook has also received numerous awards and recognitions, including a listing in Nielsen's Top 10 Web Brands (ranking Facebook 2nd overall and 1st by hours spent on the site per day) in January 2011; The Webby Award's "People's Voice Winner" for Social Networking in 2007 and 2008; Harvard Business School's "Entrepreneurial Company of the Year" in June 2008; *BusinessWeek's* "The World's 50 Most Innovative Companies" in 2008; Business Insider's "Most Likely to Change the World" award in 2009; and The Crunchie Award for Best Overall Startup in 2007, 2008 and 2009. And in 2010, *Time Magazine* named Facebook founder Mark Zuckerberg its Person of the Year.

26. As a result of the nature and quality of Facebook's services, its widespread use of the FACEBOOK Marks, the extensive and continuous media coverage, the high degree of consumer recognition of the FACEBOOK Marks, Facebook's enormous and loyal user base, numerous trademark registrations and pending applications and other factors, the FACEBOOK

Marks are famous within the meaning of Section 43(c) of the United States Trademark Act, 15 U.S.C. § 1125(c).

27. In addition, Facebook owns common law rights in the FACEPILE mark, which has been in use on its website in interstate commerce in the United States since at least as early as April 21, 2010. Facebook uses the mark FACEPILE in connection with, among other things, Facebook's social networking services. All of Facebook's marks that consist of or incorporate the term FACEPILE or a variant thereof will hereafter be referred to as the "Facebook FACEPILE Mark."

28. The Facebook FACEPILE Mark is inherently distinctive.

29. As a common law user of the mark FACEPILE, Facebook will be damaged if Resorb is allowed to register the mark FACEPILES.

RESORB'S USE AND APPLICATION FOR THE FACEPILES MARK

30. As discussed above, Resorb filed the FACEPILES Application on an in-use basis on April 30, 2010. The FACEPILES Application claims a first use in commerce date of April 30, 2010, and a first use anywhere date of January 10, 2010.

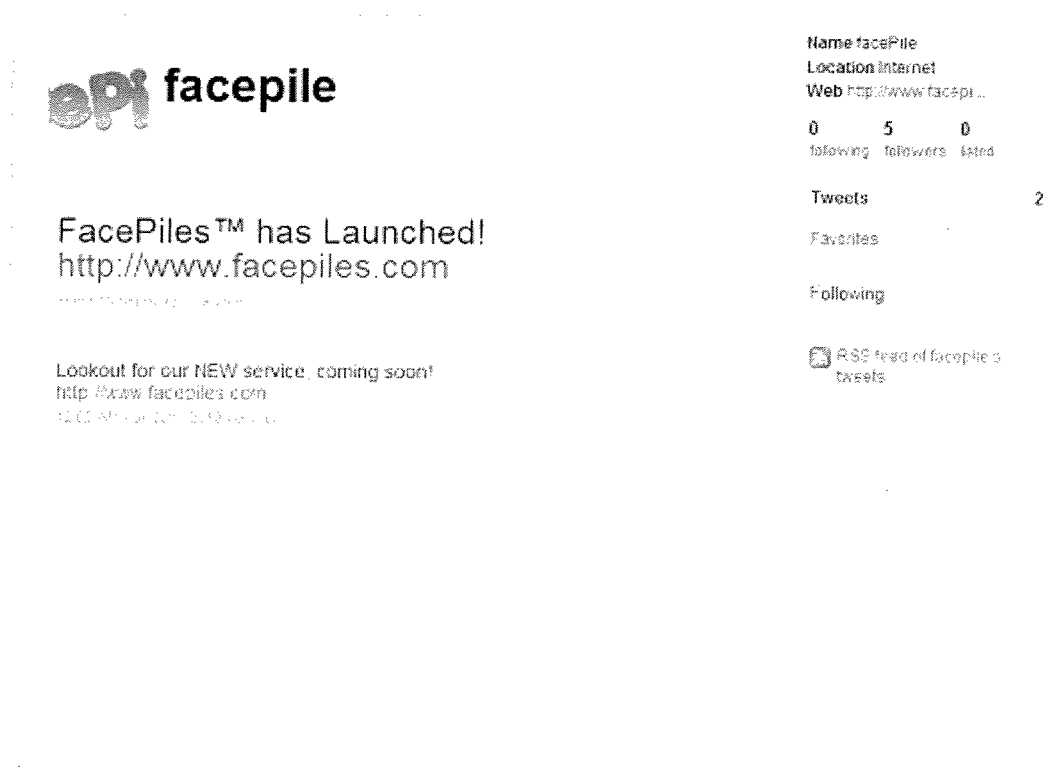
31. The FACEPILES Application was published in the *Official Gazette* on October 30, 2010.

32. The services covered by Resorb's FACEPILES Application are substantially identical to and encompassed by services provided by Facebook under the FACEBOOK Marks and the Facebook FACEPILE Mark.

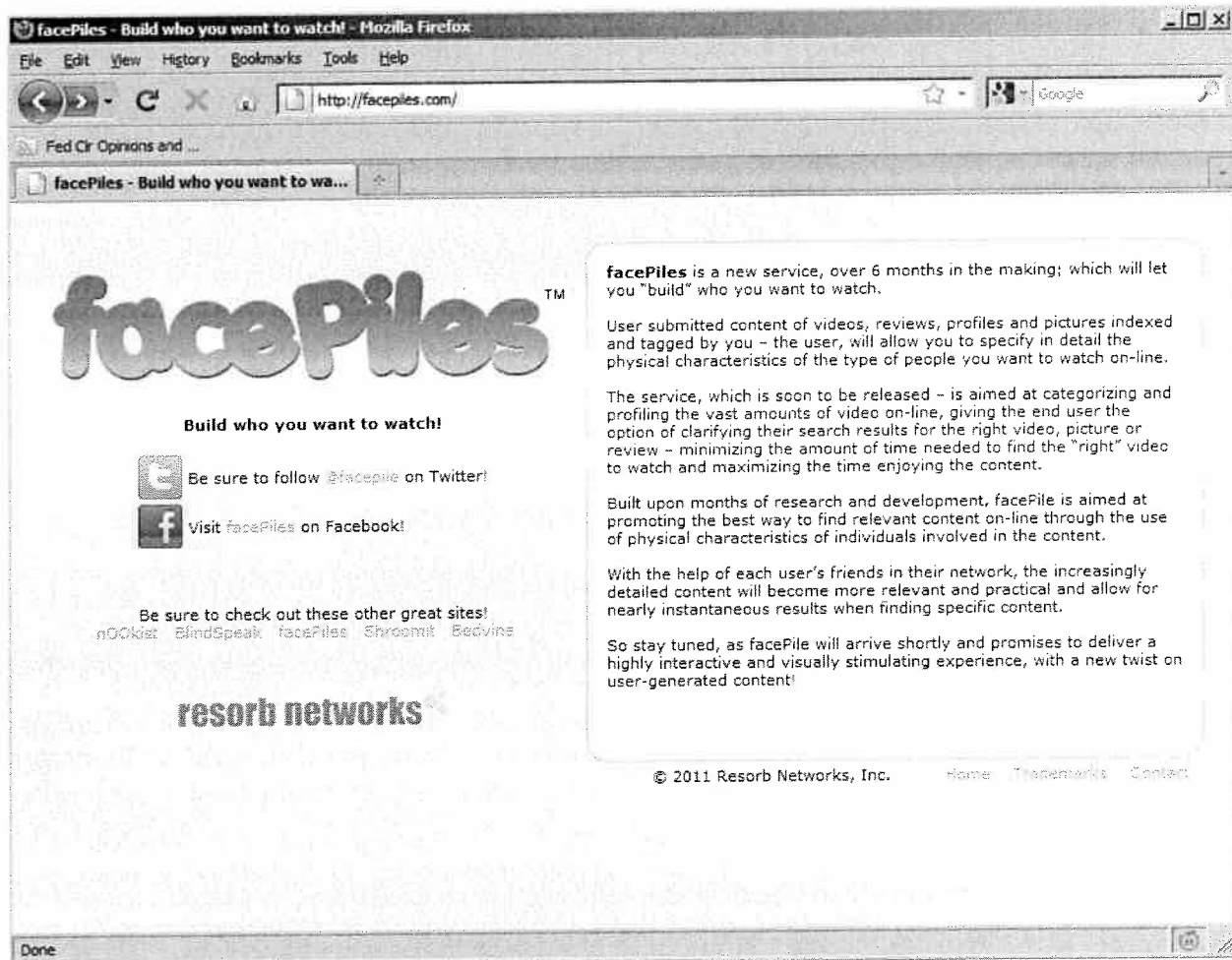
33. The target market covered by Resorb's FACEPILES Application is identical to and/or substantially overlaps with the target market for Facebook's services.

34. On information and belief, Resorb did not use the FACEPILES mark in connection with any or all of the services claimed in the FACEPILES Application as of the date of first use claimed in Resorb's Application. On information and belief, Resorb did not use the FACEPILES mark in connection with any or all of the services claimed in the FACEPILES Application as of the filing date of the FACEPILES Application. On information and belief, Resorb did not use the FACEPILES mark in connection with any services until March 7, 2011.

35. As of April 30, 2010, Applicant stated on its Twitter page, "Lookout for our NEW service, coming soon!" and provided a link to its website at www.facepiles.com, as reflected in the following screenshot (taken March 8, 2011):



36. Even eight months later, as of February 1, 2011, the www.facepiles.com website stated that the FACEPILES service “is soon to be released” and that it “will arrive shortly” rather than being currently available, as reflected below:



37. The mark Resorb proposes to register, FACEPILES, is confusingly similar to the FACEBOOK Marks and the Facebook FACEPILE Mark.

38. Upon information and belief, Resorb selected the FACEPILES Mark with knowledge of and intent to cause confusion or association with, and to capitalize on the enormous goodwill of, the FACEBOOK Marks.

39. Facebook began using its FACEBOOK Marks, and enjoys priority as a result of the filing dates of its trademark registrations and applications, well prior to the claimed first use date of the FACEPILES Mark.

40. Facebook began using its FACEPILE Mark at least as early as April 21, 2010 in connection with its social networking services, and thus enjoys priority as a result of its common law use of the mark in commerce prior to Resorb's alleged April 30, 2010 use of the FACEPILES Mark in commerce in connection with social networking.

41. Facebook is not affiliated or connected with Resorb or its services, nor has Facebook endorsed or sponsored Resorb or its services.

**FIRST GROUND FOR OPPOSITION:
FAILURE TO USE MARK WITH ALL CLAIMED SERVICES**

42. Facebook incorporates by reference Paragraphs 1 through 41, inclusive, as if fully set forth herein.

43. Resorb filed Application Serial No. 85/026,924 for FACEPILES on an in-use basis on April 30, 2010, claiming a first use date in commerce of April 30, 2010 and a first use anywhere date of January 10, 2010 for the following goods and services in International Class 42: "[c]omputer services, namely creating an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking featuring profile pictures of friends and video content."

44. The specimen submitted by Resorb to the PTO on April 30, 2010 with its application for the FACEPILES Mark consists of a purported screen shot of the website www.facepiles.com. The screenshot consists solely of the following statement: "facePiles Build what you want to watch."

45. As discussed above, however, on the same date it filed its trademark application on an in-use basis, Applicant stated on its Twitter page that its services were simply coming soon. On information and belief, this status was unchanged until March 7, 2011 when Applicant announced on its Twitter page that “FacePiles has launched!”

46. On information and belief, prior to March 7, 2011, Resorb had not ever used the FACEPILES Mark in connection with the goods and services claimed in the FACEPILES Application.

47. Accordingly, Resorb’s FACEPILES Mark is unregistrable pursuant to 15 U.S.C. §§ 1051 and 1063, and should be refused registration.

**SECOND GROUND FOR OPPOSITION:
LIKELIHOOD OF CONFUSION**

48. Facebook incorporates by reference Paragraphs 1 through 41, inclusive, as if fully set forth herein.

49. Resorb’s FACEPILES Mark is confusingly similar to the FACEBOOK Marks in appearance, sound, and commercial impression.

50. The services described in the FACEPILES Application are the same as or closely related to the services offered by Facebook under the FACEBOOK Marks and identified in Facebook’s trademark registrations and applications. According to the identification of services in its FACEPILES Application, Resorb is currently using the FACEPILES mark in connection with providing social networking services, including “creating an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking featuring profile pictures of friends and video content.” Resorb’s alleged use the FACEPILES Mark in connection with a service that provides the same or related social networking services provided by Facebook. Resorb’s service is

substantially identical or related to and encompassed by Facebook's online networking services. However, Facebook is not affiliated or connected with Resorb or its service, nor has Facebook endorsed or sponsored Resorb or its service.

51. The types of service identified in the FACEPILES Application and the types of services offered by Facebook under the FACEBOOK Marks are offered through the same channels of trade, namely, through the internet.

52. On information and belief, Resorb chose the FACEPILES Mark with knowledge of, and the intent to create an association with or create a likelihood of confusion with Facebook's services and the FACEBOOK Marks.

53. Accordingly, registration of the FACEPILES Mark will injure Facebook by causing the public to be confused or mistakenly believe that the service provided by Resorb is associated with, endorsed, or sponsored by Facebook. Facebook has no control over the nature and quality of the service offered by Resorb under the FACEPILES Mark, and Facebook's reputation and goodwill will be damaged and the value of the FACEBOOK Marks jeopardized, all to Facebook's detriment. Any defect, objection or fault found with Resorb's service marketed under the FACEPILES Mark would necessarily reflect upon and seriously injure the reputation that Facebook has established for the goods and services it offers in connection with the FACEBOOK Marks.

54. Resorb's FACEPILES Mark, when used in connection with the services described in the FACEPILES Application, is confusingly similar to the Facebook FACEPILE Mark in appearance, sound, and commercial impression. Resorb's FACEPILE mark contains the entire Facebook FACEPILE Mark, and adds only a non-distinctive pluralization.

55. The services described in the FACEPILES Application are the same as or closely related to the services offered by Facebook under the Facebook FACEPILE Mark. According to the identification of services in its FACEPILES Application, Resorb is currently using the FACEPILES mark in connection with providing social networking services, including “creating an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking featuring profile pictures of friends and video content.” Resorb’s service is substantially identical or related to and encompassed by Facebook’s online social networking services. However, Facebook is not affiliated or connected with Resorb or its service, nor has Facebook endorsed or sponsored Resorb or its service.

56. The types of service identified in the FACEPILES Application and the types of services offered by Facebook under the Facebook FACEPILE Mark are offered through the same channels of trade, namely, through the internet.

57. Accordingly, registration of the FACEPILES Mark will injure Facebook by causing the public to be confused or mistakenly believe that the service provided by Resorb is associated with, endorsed, or sponsored by Facebook. Facebook has no control over the nature and quality of the service offered by Resorb under the FACEPILES Mark, and Facebook’s reputation and goodwill will be damaged and the value of the Facebook FACEPILE Mark jeopardized, all to Facebook’s detriment. Any defect, objection or fault found with Resorb’s service marketed under the FACEPILES Mark would necessarily reflect upon and seriously injure the reputation that Facebook has established for the goods and services it offers in connection with the Facebook FACEPILE Mark.

58. Registration of the mark herein opposed will damage Facebook because Resorb's FACEPILES Mark is likely, when used on or in connection with the service described in the opposed application, to cause confusion, or to cause mistake or to deceive. Thus, the FACEPILES Mark is unregistrable under 15 U.S.C. §§ 1052(d), 1053 and 1063, and should be refused registration.

**THIRD GROUND FOR OPPOSITION:
DILUTION OF A FAMOUS MARK**

59. Facebook incorporates by reference Paragraphs 1 through 41 inclusive, as if fully set forth herein.

60. The FACEBOOK Marks are inherently distinctive in relation to Facebook's goods and services.

61. Facebook has used the FACEBOOK trademark since at least as early as 2004 for online networking services, and has expanded use of the FACEBOOK Marks to many other goods and services.

62. Facebook is the owner of numerous U.S. registrations and applications for the FACEBOOK Marks.

63. Facebook and the FACEBOOK Marks have been the subject of extensive and continuous media attention.

64. Facebook has continuously used the FACEBOOK Marks throughout the United States and internationally.

65. As a result of the considerable publicity afforded the FACEBOOK Marks and the enormous and loyal base of customers that Facebook has for its services, the FACEBOOK Marks have vast consumer recognition within the United States.

66. The FACEBOOK Marks became famous before Resorb's filing of the FACEPILES Application on April 30, 2010, and well before Resorb's alleged first use dates of January 10, 2010 and April 30, 2010.

67. Resorb on its website describes its mission as "creat[ing] radical, never before seen applications for the web." A more detailed review of Resorb's products and press releases, however, reveals that Resorb's "never before seen" applications are often sexually themed. For example, Resorb offers a product under the name "nOOKist" that apparently allows users to "Keep track of your sex life" and "Securely record all of your sexual history in your electronic black book – and use the real-time charts and graphs to see when you are most sexually active." Resorb's Press Room section of its website suggests that Resorb's primary business focus since at least 2005 has been to offer sexually themed software applications.

68. Resorb's use of the FACEPILES Mark in connection with social networking services will blur and weaken the connection in consumers' minds between the FACEBOOK Marks and Facebook's goods and services, thereby diluting the distinctiveness of the famous FACEBOOK Marks to Facebook's severe detriment.

69. Resorb's history of offering sexually themed software products combined with its use of the FACEPILES Mark in connection with social networking services will tarnish the FACEBOOK Marks by creating a false association between Resorb and Facebook, to Facebook's severe detriment.


70. Accordingly, Resorb's Mark is unregistrable pursuant to 15 U.S.C. §§ 1052, 1053, 1063, and 1125, and should be refused registration.

Wherefore, Facebook prays that this Opposition be sustained, and that Application Serial No. 85/026,924 be refused.

Respectfully submitted,

COOLEY LLP
ANNE H. PECK
JEFFREY T. NORBERG

Date: March 9, 2011

By: 

Jeffrey T. Norberg
Attorneys for Opposer Facebook, Inc.

CERTIFICATE OF TRANSMITTAL AND SERVICE

I hereby certify that this Notice of Opposition is being electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA) on the date indicated below.

I hereby further certify that on the date indicated below, a true and correct copy of this Notice of Opposition was placed in the United States Mail, to be sent via first class mail, addressed to the applicant and correspondent (being the same as the applicant) for the subject application as follows:

Resorb Networks, Inc.
8 Heathcote Ave
Edison, New Jersey 08817

Date: March 9, 2011

